

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:08-CV-218-D


NEBRASKA DISTRIBUTING CO.,)
)
 Plaintiff,)
)
 v.)
)
INTERVOLVE, INC.,)
)
 Defendant.)

ORDER

Plaintiff Nebraska Distributing Company filed a complaint [D.E. 1] that included a fraud claim in count two. See Compl. ¶¶ 20–27. Defendant Intervolve, Inc. filed a motion to dismiss count two [D.E. 12] pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff opposes the motion to dismiss [D.E. 16], but alternatively asks the court to permit it to amend its complaint to plead count two with additional particularity. See Pl.’s Mem. in Opp’n to Def.’s Mot. to Dismiss 2.

The court has considered defendant’s motion to dismiss under the governing standard. The court GRANTS defendant’s motion to dismiss count two without prejudice. Plaintiff is GRANTED until October 20, 2008, to file an amended complaint as to count two. Defendant shall plead in response to the amended complaint in accordance with the Federal Rules of Civil Procedure.

SO ORDERED. This 6 day of October 2008.


JAMES C. DEVER III
United States District Judge